

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

CRL.A.No. 591 of 2007()

SC.232/2000 ON THE FILE OF THE COURT OF THE ADDL.SESIONS
JUDGE, FAST TRACK (ADHOC)-IV, THIRUVANANTHAPURAM.
CP.46/1999 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, ATTINGAL

APPELLANT:

AMMU, C.NO. 594
VANITHA JAIL
NEYYATTINKARA, TRIVANDRUM

BY STATE BRIEF SRI.V.P.JOY

RESPONDENT:

STATE OF KERALA
REPRESENTED BY THE
PUBLIC PROSECUTOR

BY P.P.SRI.MOHAMMED PUZHAKKARA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 11-6-2007, THE COURT ON 11/06/2007 DELIVERED THE
FOLLOWING:

K. Thankappan, J.

Crl. A. No. 591 of 2007

Dated this the 11th day of June, 2007

JUDMENT

Accused in S.C.No.232/2000 on the file of the Court of the Addl. Sessions Judge, Fast Track Court (Adhoc) No.IV, Thiruvananthapuram is the appellant. She faced trial for the offences punishable under section 8(1) and (2) of the Abkari Act on the allegation that she was found in possession 10 litres of arrack. To prove the case against the appellant the prosecution examined PW1 to PW3 and Exts.P1 to P6 were marked. Material object MO1 was also marked. When the appellant was questioned under section 313 of Cr.P.C., she denied the allegation levelled against her and stated that she was innocent and she was falsely implicated in the case at the instance of Abdul Vahib, an Excise official who was her neighbour. The trial court after considering the evidence found that the appellant guilty of the offences punishable under section 8 of the the Abkari Act and she was convicted thereunder and sentenced to undergo rigorous imprisonment for a period of one year and also to pay a fine of Rs.1,00,000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of three months. The conviction and

sentence awarded against the appellant are under challenge in this appeal.

2. The appeal is filed through the jail authorities. Since no counsel of her own choice was appointed to defend the case of the appellant, an advocate from State Brief panel has been appointed to defend her case.

3. This Court heard learned counsel for the appellant and the learned Public Prosecutor.

4. Learned counsel for the appellant contends that the court below had actually misread the evidence adduced by the prosecution to find the appellant guilty under section 8 of the Act. No independent witness to prove the case and the only independent witness who examined in the court to prove the seizure of the contraband article turned hostile to the prosecution. The learned counsel for the appellant also submits that PW3 had not followed the procedure prescribed under the provisions of Excise Manual as well as the provisions of the the Abkari Act when he detected the offence. The learned counsel further submits that there is no evidence before the court to show that any sample taken from the appellant for analysis as provided under section 53 of the the Abkari Act as well as the provisions of Kerala Excise Manual.

5. The prosecution case is that while PW3, detecting officer, and the party were conducting patrol duty and when they reached at a place near Parathoor Bridge at about 5 p.m. they saw the appellant coming towards them holding a plastic can in suspicious circumstance. She was detained and on verification, it was found that the can contained arrack. Ext.P1 seizure mahazar was prepared and Ext.P3 arrest intimation regarding the arrest of the appellant was given to a relative of the appellant. The further case of the prosecution is that sample was sent for chemical analysis and as per Ext.P6 report it is reported that the sample contained 16.25 % ethyle alcohol.

6. It is seen that the incident took place on 25-9-1997 and MO1 can was produced before the court on 27-9-1997. It is relevant to note that when the can was produced before the court, it was found empty. There is no evidence to show that the contraband article was kept in the proper custody till it was produced in court. The case of the appellant is that the case was foisted against her at the instance of Abdul Vahid, an Excise official. She had a further case that nothing was seized from her. Her case is also fortified by the evidence of PW1, independent witness, who had stated that no contraband article was seized from the appellant. It is also relevant to note that there is no evidence either from PW2 or from PW3

that the sample was taken from the contraband article alleged to have been seized and produced before the court. No Thondi Clerk has been examined. In the above circumstances, it is very difficult to believe the prosecution case.

7. Apart from the above, it is seen that the time of alleged seizure is also not tally with the documents. Apart from this either PW2 or PW3 had not stated before the court that the residue and sample were kept in the proper custody till those items were produced in court. In this context the principle laid down by Narayanai v. Excise Inspector (2002(3) KLT 725 is relevant in this case. In the above decision this Court held that in the absence of any evidence to prove that residue and sample were kept in the proper custody till the date of producing the same before Court, the chance of tampering with the sample taken and the residue seized could not be ruled out. The incident was took place on 25-9-1997, the appellant was produced at the residence of the Magistrate on 25-9-1997 and the thondi article along with the thondi list was produced before the court on 27-9-1997. It is relevant to note that when the can was produced before the court, it was found empty. It is not explained properly. The case of the appellant is that at the instigation of Abdul Vakaf the case was foisted against her. Having considered the facts and circumstances of the case, this

Court is of the view that the prosecution has not proved that the residue and sample were kept in the proper custody till those items were produced in court and hence benefit of doubt is to be given to the appellant.

8. In the above circumstances, this Court is of the view that the prosecution has miserably failed to prove the case against the appellant. Hence, the conviction and sentence awarded against the appellant/accused in S.C.No.232/2000 on the file of the Court of the Addl. Sessions Judge, Fast Track Court (Adhoc) No.IV, Thiruvananthapuram are set aside and the appellant is acquitted. The appellant shall be released forthwith unless required in any other case.

K. Thankappan,
Judge.

K. Thankappan,J.

Crl.A. No. 591 /2007

Judgment
11-6-2007